

STATE OF MICHIGAN
COURT OF APPEALS

JENNIFER LEE CALIBEO,

Petitioner-Appellee,

v

SECRETARY OF STATE,

Respondent-Appellant.

UNPUBLISHED

October 19, 2006

No. 262631

Macomb Circuit Court

LC No. 04-005341-AL

Before: Cavanagh, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

Respondent, Secretary of State, appeals by leave granted from an order setting aside the five-year revocation of petitioner's driver's license. We reverse. This case is being decided without oral argument pursuant to MCR 7.214(E).

This action arises out of respondent's revocation of petitioner's driver's license for five years following petitioner's third drinking and driving conviction. On appeal, respondent argues that the circuit court erroneously applied MCL 257.303 in setting aside the five-year license revocation. We agree.

"Statutory interpretation is a question of law that this Court reviews de novo." *Morales v Auto-Owners Ins Co (After Remand)*, 469 Mich 487, 490; 672 NW2d 849 (2003). The cardinal principle of statutory construction is that courts must give effect to legislative intent. *Dressel v Ameribank*, 468 Mich 557, 562; 664 NW2d 151 (2003). "The first step in discerning intent is to examine the language of the statute," which is to be read "according to its ordinary and generally accepted meaning." *Helder v Sruba*, 462 Mich 92, 99; 611 NW2d 309 (2000). When the statute is clear on its face, a court is not to articulate its view of policy, but apply the plain language of the statute. *Id.*

Michigan law requires respondent to revoke the driver's license of an individual with two drinking and driving convictions occurring within seven years, MCL 257.303(2)(c)(i), or three drinking and driving convictions occurring within ten years, MCL 257.303(2)(g)(i).¹ Regarding

¹ Regarding drunk driving, MCL 257.303(2)(g)(i) refers to section 625(1), which expressly
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the reissuance of a license to a person whose license was previously revoked for drinking and driving, MCL 257.303(4) provides in relevant part:

The secretary of state shall not issue a license under this act to a person whose license has been revoked under this act or revoked and denied under subsection (2) until all of the following occur, as applicable:

(a) The later of the following:

(i) The expiration of not less than 1 year after the license was revoked or denied.

(ii) The expiration of not less than 5 years after the date of a subsequent revocation or denial occurring within 7 years *after the date* of any prior revocation or denial. [Emphasis supplied.]

On May 10, 2002, respondent imposed two revocation penalties on petitioner. First, respondent revoked petitioner's driver's license for one year as a result of her second drinking and driving offense within seven years that occurred on March 5, 2002. Petitioner does not challenge this revocation. Second, respondent revoked petitioner's driver's license for five years as a result of her third drinking and driving offense within ten years that occurred on April 12, 2002. At issue is whether MCL 257.303 renders invalid the five-year revocation of petitioner's driver's license because it was imposed on the same date as the one-year revocation.

On its face, MCL 257.303(4) only authorizes respondent to issue a license under certain circumstances. Notwithstanding this, the plain language of MCL 257.303(2) pertains expressly to license revocation. Specifically, MCL 257.303(2) provides:

Upon receiving the appropriate records of conviction, the secretary of state *shall revoke* the operator's . . . license of a person and deny issuance to a person having any of the following . . . :

(g) Any combination of 3 convictions within 10 years for any of the following . . . :

(i) A violation or attempted violation of section 625(1) [Emphasis supplied; see footnote one, *supra*.]

Thus, because MCL 257.303(4)(a)(ii) pertains to the issuance rather than the revocation of a driver's license, that petitioner's five-year revocation occurred on the same date as her one-year revocation is of no consequence. *Bunce v Secretary of State*, 239 Mich App 204, 207; 607 NW2d 372 (1999). Moreover, there is no requirement in MCL 257.303 that respondent impose revocations on different dates. Therefore, the circuit court's order was erroneous.

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prohibits operating a motor vehicle while under the influence of an intoxicating liquor.

We note that even if MCL 257.303(4) were applicable, as petitioner argues, the circuit court nevertheless erred in setting aside the five-year license revocation. “In interpreting the statute at issue, we consider both the plain meaning of the critical word or phrase as well as ‘its placement and purpose in the statutory scheme.’” *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999), quoting *Bailey v United States*, 516 US 137, 145; 116 S Ct 501; 133 L Ed 2d 472 (1995). Further, “[s]tatutes should be construed to avoid absurd consequences, injustice, or prejudice to the public interest.” *Morris & Doherty, PC v Lockwood*, 259 Mich App 38, 44; 672 NW2d 884 (2003). Petitioner claims that MCL 257.303(4) requires that the imposition of a five-year license revocation occur after the date of the imposition of a one-year license revocation to be valid. However, in light of the placement and purpose of the words “after the date” in the statutory scheme of MCL 257.303, petitioner’s argument fails.

In evaluating the statutory scheme, it is clear that the Legislature intended to punish a third-time repeat drinking and driving offender. Specifically, the statute provides that respondent shall revoke a license of an individual with three drinking and driving convictions within ten years. MCL 257.303(2)(g)(i). To construe MCL 257.303(4)(a)(ii) to require that the imposition of a valid five-year revocation occur on a different date than a one-year revocation would render the power granted to respondent to punish third-time habitual drinking and driving offenders void in this case. Indeed, “courts . . . must avoid an interpretation that would render any part of the statute surplusage or nugatory.” *People v Perkins*, 473 Mich 626, 638; 703 NW2d 448 (2005). Further, to hold that the statute required respondent to impose the five-year revocation on different dates would lead to the absurd and unjust result of petitioner avoiding punishment because of the close proximity in time between her second and third drinking and driving offenses. *Morris & Doherty, PC, supra* at 44. In addition, given that this is petitioner’s third drinking and driving offense, she is, at least arguably, a threat to the public safety on the road. *Id.* Therefore, the circuit court’s order was erroneous.

We note that respondent cites *Rodriguez v Secretary of State*, 215 Mich App 481; 546 NW2d 661 (1996), and *Bunce, supra* at 204, in support of its argument that a circuit court lacks jurisdiction to set aside a driver’s license revocation of an habitual offender unless the revocation was arbitrary and capricious. However, this argument is an incomplete statement of the law. *Rodriguez* holds that a petitioner whose driver’s license was revoked by respondent may appeal to the circuit court, which may only set aside respondent’s decision provided that the petitioner’s substantial rights were prejudiced. *Rodriguez, supra* at 482-483. This prejudice includes not only an arbitrary and capricious revocation, but also a material error of law. *Id.* at 483.² Further, *Bruce* merely stands for the proposition that it is improper for the circuit court to order respondent to reconsider a petitioner’s petition under a different standard of review than the standard that respondent had the statutory right to create. *Bruce, supra* at 219-220. Thus, this

² Regarding prejudice to petitioner’s substantial rights, *Rodriguez* cites MCL 257.323(6). *Rodriguez, supra* at 482-483. Although this section number was subsequently amended by 1994 PA 449 to MCL 257.303(4), there were no substantive changes and the current language is identical.

argument fails. However, in light of the prior analysis, the circuit court's order setting aside petitioner's five-year driver's license revocation was erroneous.

Reversed.

/s/ Mark J. Cavanagh
/s/ Richard A. Bandstra
/s/ Donald S. Owens